

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

EQ-THE ENVIRONMENTAL QUALITY  
COMPANY, a Michigan corporation,

Plaintiff and  
Counter Defendant,

v.

FMRI, INC., a Delaware corporation, and  
FANSTEEL, INC., a Delaware corporation,

Defendants and  
Counter Plaintiffs and  
Third-Party Plaintiffs,

v.

GREG P. MARSHALL, an individual,

Third-Party Defendant.

Case No. CIV-12-496-RAW

**ORDER**

Before the court is the Report and Recommendation of the United States Magistrate Judge regarding damages [Docket No. 88]. This court previously granted default judgment to Third-Party Plaintiffs against Greg Marshall as to liability on their claims in Count I of actual and constructive common law fraud and deceit and their claims in Count III of negligent misrepresentation and omission. The court referred the issue of damages to the Magistrate Judge for Findings and Recommendations pursuant to 28 U.S.C. § 636(b)(1). The Magistrate Judge held a hearing on the damages issue on September 24, 2013.

At the hearing, the Magistrate Judge afforded Mr. Marshall to respond, yet he chose not to contest the amount of damages sought by Third-Party Plaintiffs. Thereafter, the Magistrate Judge entered a well-reasoned Report and Recommendation, recommending that the court award


the damages requested in the Status Report.

Mr. Marshall has now filed an objection to the Report and Recommendation, arguing that he did not cause Third-Party Plaintiffs to suffer any loss. He argues that they received “significant benefit” from his efforts. He states that he should have executed the EQ contract differently and should have found a way to fund his defense and participate in this case, but that he does not agree with the damages recommended by the Magistrate Judge.

As Third-Party Plaintiffs argue, “theories raised for the first time in objections to the magistrate judge’s report are deemed waived.” United States v. Garfinkle, 261 F.3d 1030, 1031 (10th Cir. 2001). Moreover, while Mr. Marshall states that he should have found a way to fund his defense and participate in this case, funding was not necessary for him to participate in this case. Mr. Marshall could have made the arguments he advances in his objection at any time during this litigation. He may not come in at the eleventh hour and begin anew.

Accordingly, Mr. Marshall’s objection is overruled. The Report and Recommendation of the Magistrate Judge is hereby AFFIRMED and ADOPTED as this court’s Findings and Order.

IT IS SO ORDERED this 29th day of April, 2014.

  
Ronald A. White  
United States District Judge  
Eastern District of Oklahoma